163 U.S. 427

TRANSCRIPT OF RECORD.

163-427

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1895.

No. 870.

THE UNITED STATES, PLAINTIFF IN ERROR,

vs.

THE REALTY COMPANY.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF LOUISIANA.

FILED JANUARY 27, 1896.

(16160.)

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a United States of America, circuit court of the United States, eastern district of Louisiana.

THE UNITED STATES, PLAINTIFF IN ERROR, *versus* THE REALTY COMPANY, DEFENDANT IN ERROR. } No. 12450.

Ferdinand B. Earhart, esq., United States district attorney, for plaintiff in error; Messrs. Jas. D. Hill, Thomas J. Semmes, Jos. H. Choate, and Chas. F. Manderson, for defendant in error.

Writ of error from the Supreme Court of the United States of America to the circuit court of the United States for the eastern district of Louisiana, returnable within ten (10) days from the twentieth (20th) day of January, A. D. 1896, at the city of Washington, D. C.

Transcript of record.

1 United States circuit court, eastern district of Louisiana.

Petition, filed Nov. 5, 1895.

(Fol. 1.) In the circuit court of the United States for the fifth circuit in the eastern district of Louisiana.

THE REALTY COMPANY, PLAINTIFF, *against* THE UNITED STATES, DEFENDANT. }

The Realty Company, the plaintiff in the above-entitled action, complains of the defendant herein, and for a cause of action alleges as follows:

First. That the said Realty Company is, and at the times hereinafter stated was, a corporation duly created and organized under the laws of the State of Louisiana, and having its principal place of business at New Orleans, in said State, within the eastern district of Louisiana, and was engaged in the business of producing sugar from cane grown within the United States, in the said State of Louisiana.

Second. That prior to the first day of July in the year 1893, the said plaintiff complied with the provisions of the bounty law as contained in Schedule E of the tariff act of October 1st, 1890, by filing with the
2 Commissioner of Internal Revenue a notice of the place where the plaintiff intended to produce sugar, with a general description of
(3) the machinery and methods to be employed by it, and with an estimate of the amount of sugar proposed to be produced in the year next ensuing, and an application for a license to so produce, which application was accompanied by a bond in a penalty and with sureties approved by the Commissioner of Internal Revenue, conditioned that the plaintiff would faithfully observe all rules and regulations that should be prescribed for such manufacture and production of sugar, and thereupon the Commissioner of Internal Revenue, upon receiving such application and bond, issued to the plaintiff as applicant a license to produce sugar
(4) from cane grown within the United States, at the place, namely, Baldwin, Louisiana, and with the machinery and by the methods

described in the said application, for one year from the date of such license, which was the 1st day of July, 1893.

Third. That, proceeding under said license, the plaintiff, at Baldwin, in Louisiana, aforesaid, between the 1st day of July, 1893, and the 30th day of June, 1894, produced and manufactured, at the said place, from sugar cane grown or produced within the United States, three
(5) hundred and eighteen thousand six hundred and eighty-four pounds of sugar, testing less than ninety, and not less than eighty, degrees by the polariscope, and that no bounty has been paid upon the same, and thereupon the plaintiff became entitled under the provisions of the act of Congress entitled "An act making appropriations for sundry civil expenses of the Government for the fiscal year ending
3 June 30, 1896, and for other purposes," to receive from the defendant a bounty of one and three-fourths cents a pound on all said sugars so produced and manufactured by it as aforesaid,
(6) amounting to the sum of five thousand five hundred and seventy-six dollars and ninety-seven cents.

Fourth. That heretofore, in accordance with the regulations made and approved by the Treasury Department for the enforcement of said act of October 1st, 1890, and on the 17th day of July, 1894, the plaintiff duly presented its claim for said bounty to the collector of internal revenue for the district of Louisiana, together with such proof of manufacture and production of said sugar as was required in the case by the Commissioner of Internal Revenue with the approval of the Secretary of the
(7) Treasury. That the said claim and proofs were examined and recommended for approval by the said collector for the sum of five thousand five hundred and seventy-six dollars and ninety-seven cents, and on the 18th day of August, 1894, the said claim for bounty on said sugar was examined and allowed by the Commissioner of Internal Revenue at the sum last aforesaid, all which appears by the certificate hereto annexed marked Schedule No. 1002. That the plaintiff has duly presented to the Secretary of the Treasury such claim so examined, allowed, and approved by the said Commissioner of Internal Revenue and
(8) has demanded payment of said bounty to the amount aforesaid, but the said Secretary has declined and refused to pay the same.

Wherefore, the said plaintiff demands judgment against the United States for the said sum of five thousand five hundred and sev-
4 enty-six dollars and ninety-seven cents, together with costs of this action.

(Signed) JAS. D. HILL,
THOS. J. SEMMES,
JOS. H. CHOATE,
CHAS. F. MANDERSON,
Of Counsel.

STATE OF NEW YORK,
Southern District of New York, City and County of New York:

Albert R. Shattuck, being duly sworn, deposes and saith that he is the president of the Realty Company, the plaintiff in the foregoing complaint named; that he has read the said petition and knows the contents thereof, and that the same is true according to his information and belief. And further saith not.

(Signed) ALBERT R. SHATTUCK.

Sworn to and subscribed before me this 1st day of November, 1895.

[SEAL.] (Signed) PHILIP S. DEAN,
Notary Public, New York County.

Marshal's return.

Received by U. S. marshal, New Orleans, La., November 5, '95, and on the same day I served copy hereof on the United States by handing the same to Hon. F. B. Earhart, U. S. attorney, in person, in the
5 city of New Orleans, La.

(Signed) J. V. GUILLOTTE,
U. S. Marshal.
By ALCEE LE BLANC, *Dy.*

Exhibit marked Schedule 1002, filed with petition November 5, 1895.

UNITED STATES OF AMERICA,
R. M. C. TREASURY DEPARTMENT,
October 31, 1895.

Pursuant to section 882 of the Revised Statutes I hereby certify that the annexed are copies of papers in the claim of the Realty Company for bounty on sugar on file in this Department.

In witness whereof I have hereunto set my hand and caused
[SEAL.] the seal of the Treasury Department to be affixed on the day and year first above written.

(Signed) W. E. CURTIS,
Acting Secretary of the Treasury.

W. R. W.
M. H.

6 [Office of the Fifth Auditor of the Treasury. Form 33½.]

Reports on miscellaneous internal-revenue accounts.

No. 67485.] BOUNTY ON SUGAR.

TREASURY DEPARTEENT,
FIFTH AUDITOR'S OFFICE,
August 18, 1894.

I hereby certify that I have examined and adjusted ten claims for bounty on sugar under act of October 1, 1890, and find that the sum of thirteen thousand eight hundred twenty-six & 71/100 dollars is due from the United States as follows:

[Schedule No. 1002.]

To whom payable.	District.	Number of claim.	Amount.
Bodin, Ulysse	La	8832	710.84
Bourgeois & Stonaker	"	9530	1,432.04
Davenport, John J	"	[2]9538	40.84
Hermitage Planting and Manufacturing Co	"	9457	740.86
Martin, James F	"	9523	580.35
Pugh, Edward N	"	9157	30.46
The Realty Company	"	9518	5,576.97
Romero, Mrs. Olivia	"	9529	456.90
House, T. W	Third Tex	9527	1,234.66
The Hamilton Disston Investment Company	Fla	9526	3,022.79
			$13,826.71

Drafts to be sent to Commissioner of Internal Revenue.

As appears from account and vouchers herewith transmitted for decision of the First Comptroller of the Treasury thereon.

J. J. WILLIE, *Acting Auditor.*
E. P. M.

$13,826.71

To the FIRST COMPTROLLER OF THE TREASURY.

7 (Written on reverse of foregoing schedule, thus:)

TREASURY DEPARTMENT,
FIRST COMPTROLLER'S OFFICE,
August 22d, 1894.

$13,826.71.

I admit and certify that a balance of thirteen thousand eight hundred and twenty-six and 71 100 dollars is due and payable as stated in the above report.

R. B. BOWLER,
First Comptroller.
By C. M. FOREE,
Deputy First Comptroller.

W. O. B.

To the REGISTER OF THE TREASURY.

(Indorsed:) No. 67485. Fifth Auditor's report on claims for bounty on sugar. Schedule No. 1002 ten claims. $13,826.71. Treasury Department. Fifth Auditor's Office. First Comptroller's Office. Examined and stated by L. Twitchell. Examined by S. Willard Saxton.

8 F. C. J. [Schedule No. 1002. Office Form No. 323.] S. N

Schedule of claims for bounty on sugar which have been examined and allowed.

District.	No. of claim.	Claimants.	Amount.
La	8832	Bodin, Ulysse	$710.84
"	9530	Bourgeois & Stonaker	1,432.04
"	9528	Davenport, John J	40.84
"	9457	Hermitage Planting and Manufacturing Co.	740.86
"	9533	Martin, James F	580.35
"	9157	Pugh, Edward N	30.46
"	9518	The Realty Company	5,576.97
"	9529	Romero, Mrs. Olivia	456.90
Third Tex	9527	House, T. W	1,234.66
Fla	9526	The Hamilton Disston Investment Company.	3,022.79
Total			$13,826.71

I hereby certify that the foregoing claims for bounty on sugar have been examined and allowed.

G. W. WILSON,
Acting Commissioner.

OFFICE OF INTERNAL REVENUE,
August 18, 1894.

C. A. T.

(Endorsed:) 67485. Schedule No. 1002 of approved claims for bounty on sugar, amounting to $13,826.71, Treasury Department, Office of Commissioner of Internal Revenue, August 18, 1894. Respectfully referred to the Fifth Auditor of the Treasury. (Signed) E. C. Johnson, for deputy commissioner.

9 [Form No. 301.]

UNITED STATES INTERNAL REVENUE.

Claim for bounty on sugar of domestic production.

[Act of October 1, 1890.]

Claim of The Realty Company, producer of sugar from cane, license No. 438; name of plantation or place of production, Des Lignes plt.; post-office address, Shattuck & Hoffman, = 48 Union st. Please send draft to me at above address (Note 1), New Orleans, La.

SHATTUCK & HOFFMAN,
4 Bowling Green, New York.

STATE OF LOUISIANA, *County of New York, ss:*

Francis B. Hoffman, of the State and county aforesaid, being duly sworn, deposes and says that (Note 2) he is the secty. and treas. of The Realty Company; that h w engaged in the business of producing sugar from (Note 3) cane grown within the United States at factory, license No. 438, at Baldwin, Louisiana, from the first day of July, 1893, to the thirteenth day of June, 1894, and that within that period the following described packages of sugar, containing 340,360 pounds, were produced by them at said factory, upon which no bounty has been paid or applied for, and that they are justly entitled to the bounty thereon, amounting to $5,956\frac{30}{100}$, under the provisions of the act of Congress of October 1, 1890, as shown by the (Note 4) certificates of the weighing and inspecting officers herewith inclosed, and he now asks and demands the same.

10 *Description of packages.*

Testing not less than 90° by polariscope.

Kind of packages and serial Nos. (Note 5.)	Gross weight, lbs.	Tare, lbs.	Net weight, lbs.

Testing less than 90° and not less than 80° by polariscope.

Kind of packages and serial Nos. (sacks).	Lots.	Gross weight, lbs.	Tare, lbs.	Net weight, lbs.
19881 to 20030	145	39,088	300	38,788
20031 " 20180	146	39,557	300	39,257
20181 " 20330	147	39,910	300	39,610
20331 " 20480	148	39,972	300	39,672
20481 " 20630	149	38,400	300	38,100
20631 " 20780	150	36,935	300	36,635
20781 " 20930	151	38,343	300	38,043
20931 " 21080	152	41,052	300	40,752
21081 " 21190	153	29,723	220	29,503
		342,980	2,620	340,360
Deduct as per statement				21,676
Amt. on which bounty is due		342,980	2,620	318,684
		342,980	2,620	340,360

Total number of packages.....

Net weight of sugar testing not less than 90°.....lbs..

Bounty due at 2 cents per pound..... $ 100

Total number of packages, 1310..... 318,684

Total net weight of sugar testing less than 90° and not less than 80°.....lbs.. 340,360

Bounty due at $1\frac{3}{4}$ cents per pound..... $5,956\frac{30}{100}$
" " " " 5,576.97

Bounty at 2 cents per pound brought forward..... $ 100

Total bounty due on sugar described and included in this claim..... $5,956\frac{30}{100}$

Total bounty due on sugar described and included in this claim 5,576.97

(Signed) FRANCIS B. HOFFMAN,
Secty. and Treasurer The Realty Company.

CITY AND COUNTY OF NEW YORK:

(Note 6.) Subscribed and sworn to before me this 17 day of July, 1894.

[SEAL.] GEO. EDWIN JOSEPH,
Notary Public (60), New York County.

STATE OF NEW YORK,
City and County of New York, ss:

I, Henry D. Purroy, clerk of the city and county of New York, and also clerk of the supreme court for said city and county, the same being a court of record, do hereby certify that Geo. Edwin Joseph, before whom the annexed deposition was taken, was at the time of taking the same a notary public of New York, dwelling in said city and county, duly appointed and sworn, and authorized to administer oaths to be used in any court in said State, and for general purposes; that I am well acquainted with the handwriting of said notary, and that his signature thereto is genuine, as I verily believe.

In testimony whereof I have hereunto set my hand and affixed the seal of the said court and county, the 17 day of July, 1894.

[SEAL.] HENRY D. PURROY, *Clerk.*

11 *Collector's certificate.*

I hereby certify that the foregoing claim has been carefully examined, and that from the reports and records on file in my office the facts are as stated herein, that the claim is just and true; that no claim has heretofore been made for bounty upon the sugar herein described; that claimant is not indebted to the United States for internal-revenue taxes, and that the amount of fifty-nine hundred and fifty-six and $\frac{30}{100}$ dollars should be paid to The Realty Company as bounty on the sugar mentioned and described in the foregoing affidavit.

ISAAC F. CARTER,
Dy. Collector in charge District of La.

Dated July 21, 1894.

NOTE 1.—If claimant wishes the draft sent to any other address than his post-office address as given, it should be stated here, and the words "above address" erased.

NOTE 2.—If a member of a firm, state the fact here. In case the business is under the control of an agent, manager, or superintendent, and the proprietor is not present to make the claim, or, in case of a firm, no member is present, the claim may be sworn to by such agent, manager, or superintendent in the name of a principal. In case a claim is made by an assignee of an insolvent, or by a trustee or legal representative of a deceased sugar producer, a certified copy of authority to act in such capacity must accompany the claim in the first instance, and be referred to in the subsequent claims as on file in the Department.

NOTE 3.—Here insert name of material from which sugar is produced. If from maple sap, erase the word "grown" and substitute "produced."

NOTE 4.—The certificates or returns of the weighing and inspecting officers, showing weights and classification, should accompany the claim and be securely fastened thereto.

NOTE 5.—In describing the packages by serial numbers the list should commence with the lowest number included in the lot upon which bounty is applied for, and the remaining numbers should follow in numerical order. For purposes of ready identification of the packages upon which bounty is claimed, with the sugar reported produced, the serial numbers, when practicable, should be stated inclusively. If separations occur which divide the packages into two or more groups bearing consecutive numbers, each group should be described by its inclusive numbers, and no package bearing a number which may be combined in consecutive order with the number of any other package included in the claim should be described by itself. If the space for describing packages is insufficient to contain a record of all upon which bounty is claimed, additional sheets for description of packages may be filed in schedule form as supplementary to and constituting a part of the claim.

NOTE 6.—Affidavits may be made before a collector, deputy collector, or any officer authorized to administer oaths. They may be made before a collector or deputy collector without fee. Any other officer administering an oath or affirmation must show, by his seal of office or certificate from the proper authority, that he is qualified to do so. An officer in signing a jurat should give the title of his office.

GENERAL INSTRUCTIONS.

Claims for bounty by producers of maple sugar will be made only at the end of the season after all the sugar produced has been weighed and inspected. In other cases the sugar producer will not present claims for bounty oftener than once a week.

Claims for bounty can not be transferred or assigned. Such assignments are prohibited by section 3477, U. S. Revised Statutes.

Any person not entitled to the bounty who shall apply for or receive the same becomes guilty of a misdemeanor and liable to a fine not exceeding five thousand dollars, or imprisonment not exceeding five years, or both.

12 (Indorsed:) Claim #16. (Form 301.) United States internal revenue. No. 9518, schedule 1002. Claim for bounty on sugar. The Realty Company, claimant. License No. 438. District of La. Amount of claim, $5,956\frac{30}{100}$. 5,576.97. Treasury Department, Office of Internal Revenue, August 13, 1894. Examined and recommended for approval for the sum of $5,576\frac{97}{100}$. E. C. Johnson, chief sugar-bounty division.

13 *Affidavit of James D. Hill, filed Nov. 8, 1895.*

UNITED STATES OF AMERICA,
Eastern District of Louisiana:

Personally appeared before the undersigned authority, James D. Hill, who, being duly sworn, says that on the 5th day of November, 1895, a copy of the petition in the case of The Realty Company vs. The United States, No. 12450, of the docket of the U. S. circuit court, was served in his presence upon the United States district attorney, Ferdinand B. Earhart, for the eastern district of Louisiana, by Alcée LeBlanc, deputy U. S.

marshal for said district, and that a copy of said petition was mailed by registered letter by him to the Attorney-General of the United States on the said 5th day of November, A. D. 1895.

(Signed) JAMES D. HILL.

Subscribed and sworn before me November 8, 1895.

(Signed) H. J. CARTER,
Commissioner United States Circuit Court,
Eastern District of Louisiana.

14 *Answer filed December 12, 1895.*

In the circuit court of the United States for the fifth circuit and eastern district of Louisiana.

THE REALTY COMPANY, PLAINTIFF,
vs. No. 12450.
THE UNITED STATES, DEFENDANT.

Now comes the United States of America, made defendant herein, and by Ferdinand B. Earhart, United States attorney for the eastern district of Louisiana, in his said official capacity herein representing said defendant, pleads to said plaintiff's petition herein as follows:

1st. Defendant admits all the allegations of plaintiff's petition excepting such as are hereinafter denied.

2nd. Defendant denies the indebtedness claimed in plaintiff's petition:

First. Because the provisions known as "Schedule E—sugar," paragraphs 231, 232, 233, 234, & 235, of the act of the Congress of the United States of America entitled "An act to reduce the revenue and equalize duties on imports, and for other purposes," approved October 1st, 1890, being chapter 1244, 26th Statutes at Large, pages 583 & 584, have not only been repealed by the said Congress of the United States by the provisions of paragraph 182, "Schedule E—sugar," of an act of said Congress entitled "An act to reduce taxation, to provide revenue for the Government, and for other purposes," approved August 27th, 1894, being chapter 349, 28th Statutes at Large, pages 509 to 528, but said provisions of the said "Schedule E—sugar," of said act of October 1st, 1890, are violative of the provisions of the Constitution of said United States and are void, and that no power to enact said legislation of this character is vested in the Congress of the said United States by the Constitution thereof.

15 Second. Because all of the provisions known as "Bounty on sugar" of the act of the Congress of the said United States entitled "An act making appropriations for sundry civil expenses of the Government for the fiscal year ending June 30th, eighteen hundred and ninety-six, and for other purposes," approved March 2nd, 1895, being chapter 189, 28th Statutes at Large, pages 933 and 934, are violative of the provisions of the Constitution of the said United States and are void, and that no power to enact said legislation of this character is vested in the Congress of the said United States by the Constitution thereof.

Wherefore the premises considered, the said defendant, the said United States, prays that the said hereinbefore stated provisions of the acts of the Congress of the United States known as and included in "Schedule

E—sugar," of the said act approved October 1st, 1890, and the said provisions known as "Bounty on sugar" of the said act of Congress entitled "An act making appropriations for sundry civil expenses of the Government for the fiscal year ending June 30th, 1896, and for other purposes," approved March 2nd, 1895, be decreed contrary to and violative of the provisions of the Constitution of the said United States and null and void, and that no power to enact legislation of this character is vested in the Congress of the said United States by the Constitution thereof, and accordingly that there be judgment in favor of the said United States, defendant, and against the said plaintiff, rejecting said plaintiff's demand herein, and for all costs and general relief as in duty bound defendant will ever pray.

(Signed) F. B. EARHART,
United States Attorney.

16 *Agreement and statement of facts for plaintiff, filed Dec. 12, 1895.*

In the circuit court of the United States for the fifth circuit in the eastern district of Louisiana.

THE REALTY COMPANY, PLAINTIFF, }
vs. No. 12450. U. S. circuit court.
THE UNITED STATES, DEFENDANT. }

To the end of simplifying and expediting trial and final decision of the above-entitled action, it is stipulated that for the purposes of said trial the following statement of facts may be taken to be true:

1. The claimant has produced sugar to the amount and of the quality alleged in the petition herein, in compliance with the provisions of the bounty law, as contained in Schedule "E" of the tariff act of October 1st, 1890, and of the sundry civil bill of March 2d, 1895, and claimant will be entitled to a warrant and payment of the amount herein sued for in the event that the bounty enactment of the sundry civil bill, approved March 2d, 1895, be sustained by the courts.

2. The money is in the Treasury to meet the payment of the appropriation of $238,289.08, for bounty earned prior to the 28th of August, 1894, and of the appropriation of $5,000,000 for bounty earned between that date and the 30th of June, 1895.

17 3. It is agreed that as to copies of all statistics, messages, books, records, papers, and documents on file in any of the Departments, or excerpts from the same required in evidence by either party to this suit, authentication thereof as required under sections 882 to 908, U. S. Revised Statutes, is hereby waived, and such copies shall be admitted in evidence to the same extent as if so certified and authenticated.

(Signed) JAS. D. HILL,
THOS. J. SEMMES,
JOS. H. CHOATE,
CHAS. F. MANDERSON,
Of Counsel for Pet'r.

(Signed) F. B. EARHART,
U. S. Att'y, E. D. La.

Motion to fix for hearing entered and filed Dec. 13th, 1895.

United States circuit court, eastern district of Louisiana.

THE REALTY COMPANY, PLAINTIFF,
vs.
THE UNITED STATES, DEFENDANT. } No. 12450.

On motion of F. B. Earhart, United States attorney, it is ordered that this case be assigned for hearing on the 18 day of December, 1895.

18 *Hearing of cause, evidence offered, and judgment directed by the court to be entered for plaintiff. Extract from the minutes, November term, 1895.*

WEDNESDAY, *December 18th, 1895.*

Court met pursuant to adjournment: Present, Hon. Don A. Pardee, circuit judge.

THE REALTY COMPANY
vs.
THE UNITED STATES. } No. 12450.

This cause was this day called for trial.

Present: Thomas J. Semmes and J. D. Hill, of counsel for the plaintiff; Ferdinand B. Earhart, U. S. attorney, for the United States.

Whereupon the pleadings were read and counsel for plaintiff offered in evidence: Affidavit of James D. Hill, marked A; agreement, etc., marked B; certified copy of claim of plaintiff and certificate and allowance by Commissioner of Internal Revenue marked C; copies of acts, documents, and papers, etc., on file in the Department of Government as comprised in note of evidence, marked D.

The cause was then argued by the attorneys for the respective parties; on consideration whereof the court directed a judgment to be entered for the plaintiff—the decree and findings of fact to be prepared and submitted.

19 *Bill of exceptions No. 1, filed Dec. 18, 1895.*

United States circuit court, eastern district of Louisiana.

THE REALTY CO., PLAINTIFF,
vs.
THE UNITED STATES, DEFENDANT. } No. 12450.

Be it remembered that on the eighteenth day of December, A. D. 1895, on the trial of the above-entitled and numbered cause, plaintiff offered in evidence certain copies of documents on file in the Department of the various bureaus and offices of the United States at Washington, D. C., consisting among other papers of copies of statutes, public documents, extracts from Congressional Records, and copies of letters to officers of the Departments at Washington, D. C., to which said offer defendant, through the United States attorney, herein representing said defendant, objected, not only objecting to the introduction of said evidence, but of all

evidence not included in and forming part of the admissions in the answer and pleadings of said defendant, the United States, or included in and forming part of such evidence as may be introduced on this trial by virtue of any written agreement heretofore entered into by the parties plaintiff and defendant herein, and this honorable court having overruled the said objections of defendant to the introduction of said evidence herein referred to, defendant, through the United States attorney, excepted to said
20 rulings, and now presents this the bill of exceptions of said defendant to this honorable court for signature, &c.

(Signed) DON A. PARDEE, *Circuit Judge.*

Rendition of written judgment and findings of fact.—Extract from the minutes, November term, 1895.

NEW ORLEANS, *December 19th, 1895.*

Court met pursuant to adjournment. Present, Hon. Don A. Pardee, circuit judge.

THE REALTY COMPANY, PLAINTIFF, *vs.* THE UNITED STATES, DEFENDANT. } No. 12450.

The court, upon the evidence and after considering the same, makes the following

FINDINGS OF FACT:

I.

The conditions existing October, 1890, in the United States were that the United States had a "surplus" which was, and for several years had been, regarded by the executive and legislative branches of the Government as menacing to the public welfare, sufficiently so to justify a radical reduction of the revenue; this it was one of the primary objects of the tariff act of October, 1890, to effect; to accomplish this the duty on sugar, except on refined, which had amounted to fifty-three millions annually, was stricken off.

21 II.

In connection with the foregoing, and as a part of the commercial policy of the United States, and because of the then existing foreign export bounties on sugar, which had amounted to about one cent per pound, and in order that the United States might secure a basis on which to appeal to foreign competitive sugar-producing countries to suspend their then existing repressive and restricting legislation on the export meat products of the United States, it enacted the countervailing sugar-bounty law of October, 1890.

III.

Because of the repeal of the sugar-bounty law of October, 1890, and the reimposition of a lesser duty on foreign sugar than had prevailed prior to October, 1890, and because the larger part of the expense or cost of producing the raw material for the domestic sugar crop of 1894 had then (August 28, 1894) been incurred, the Congress of the United

States, in equitable and lawful liquidation of all claims against the Government and in execution of the industrial, financial, and commercial power and policy vested in it by the Constitution, enacted the law of March 2nd, 1895.

IV.

That the statements of the petition and exhibits attached are true, and the amount sued for is due by the United States, and the money appropriated to pay the same is in the Treasury.

CONCLUSIONS OF LAW.

22 And the court as conclusions of law determines that Congress had the power to appropriate money for the purposes stated in the sugar-bounty paragraph of the act of October, 1890, and the act of March 2nd, 1895.

2. That the petitioner is entitled to recover judgment for the amount herein sued on.

JUDGMENT.

Wherefore, the premises considered, it is now ordered, adjudged, and decreed by the court that the petitioner, The Realty Company, do have and recover from the United States the sum of five thousand five hundred and seventy-six and $\frac{97}{100}$ dollars ($5,576.97), with costs of suit.

Motion to strike, filed Dec. 19, 1895.

In the circuit court of the United States for the eastern district of Louisiana.

THE REALTY COMPANY } vs. THE UNITED STATES. } =12450.

Motion to amend findings.

23 Now comes the defendant, the United States, and moves the court to strike out from the findings of fact filed the paragraphs thereof numbered I, II, and III, for the reason that the same relate to subjects within the judicial knowledge of courts, and that therefore such declarations thereon are not properly findings of any facts as to which the conclusion of the trial court should be conclusive upon appellate tribunals; and for the further reason that, if true, such findings would not be relevant to any issues of fact in said action, but merely to the construction of certain ostensible acts of Congress.

Bill of exceptions No. 2, attached to motion to strike, &c., filed December 19, 1895.

United States circuit court, eastern district of Louisiana.

THE REALTY COMPANY, PLAINTIFF, } vs. THE UNITED STATES, DEFENDANT. } No. 12450.

Be it remembered that on this nineteenth day of December, A. D. 1895, the decree and findings of fact therein of this honorable court in

the above-entitled and numbered cause was duly signed and ordered filed; whereupon defendant, The United States, moved the honorable the said circuit court of the United States for the fifth circuit and eastern district of Louisiana, to strike out from the said findings of fact the certain Paragraphs I, II, and III, for the reasons which are more fully set forth in said motion to strike, which is made part hereof as if fully recited
24 herein. Whereupon said honorable court denied said motion to strike. Whereupon said defendant, The United States, by the said United States district attorney, representing said defendant, excepted to each and every findings of fact as set forth in said Paragraphs I, II, and III of said findings of fact and the conclusions of law thereon, and to the said rulings of said honorable court herein denying said motion to strike, and now presents to the court defendant's bill of exceptions to all of said rulings herein for signature, &c.

(Signed) DON A. PARDEE, *Circuit Judge.*

Judgment, decree, and findings of fact entered and filed and signed in open court December 19, 1895.

In the circuit court of the United States for the fifth circuit in the eastern district of Louisiana.

THE REALTY COMPANY, PLAINTIFF, *vs.* THE UNITED STATES, DEFENDANT. } No. 12450. U. S. circuit court.

The court, upon the evidence and after considering the same, makes the following

FINDINGS OF FACT:

I.

25 The conditions existing October, 1890, in the United States were that the United States had a "surplus" which was, and for several years had been, regarded by the executive and legislative branches of the Government as menacing to the public welfare, sufficiently so to justify a radical reduction of the revenue. This it was one of the primary objects of the tariff act of October, 1890, to effect. To accomplish this the duty on sugar, except on refined, which had amounted to fifty-three millions annually, was stricken off.

II.

In connection with the foregoing, and as a part of the commercial policy of the United States, and because of the then existing foreign export bounties on sugar, which had amounted to about one cent per pound, and in order that the United States might secure a basis on which to appeal to foreign competitive sugar-producing countries to suspend their then existing repressive and restricting legislation on the export meat products of the United States, it enacted the countervailing sugar-bounty law of October, 1890.

III.

Because of the repeal of the sugar-bounty law of October, 1890, and the reimposition of a lesser duty on foreign sugar than had prevailed prior to October, 1890, and because the larger part of the expense or cost of producing the raw material for the domestic sugar crop of 1894 had then (August 28, 1894) been incurred, the Congress of the United States, in equitable and lawful liquidation of all claims against the Gov-
26 ernment and in execution of the industrial, financial, and commercial power and policy vested in it by the Constitution, enacted the law of March 2nd, 1895.

IV.

That the statements of the petition and exhibits attached are true, and the amount sued for is due by the United States, and the money appropriated to pay the same is in the Treasury.

CONCLUSIONS OF LAW.

I.

And the court as conclusions of law determines that Congress had the power to appropriate money for the purposes stated in the sugar-bounty paragraph of the act of October, 1890, and the act of March 2nd, 1895.

2. That the petitioner is entitled to recover judgment for the amount herein sued on.

JUDGMENT.

Wherefore, the premises considered, it is now ordered, adjudged, and decreed by the court that the petitioner, The Realty Company, do have and recover from the United States the sum of five thousand five hundred and seventy-six and 97/100 dollars ($5,576.97), with costs of suit.

December 19th, 1895.

(Signed) DON A. PARDEE, *Circuit Judge.*

27 *Assignment of error, filed January 20th, 1896.*

United States circuit court, eastern district of Louisiana.

THE REALTY COMPANY, PLAINTIFF, *vs.* THE UNITED STATES, DEFENDANT. } No. 12450.

Now comes the defendant in the above-entitled and numbered cause, and by F. B. Earhart, United States attorney for the eastern district of Louisiana, herein representing said defendant, the United States of America, and presents and files the following

Assignments of error.

1st. The court erred in its conclusions of law in holding—

"First. And the court as conclusions of law determines that Congress had the power to appropriate money for the purposes stated in the sugar-bounty paragraph of the act of October, 1890, and the act of March 2nd, 1895."

"Second. That the petitioner is entitled to recover judgment for the amount herein sued on."

2nd. The court erred in its conclusions of law based upon the following findings of fact:

"First. The conditions existing October, 1890, in the United States were that the United States had a 'surplus,' which was and for several years had been regarded by the executive and legislative branches of the Government as menacing to the public welfare, sufficiently so to justify a radical reduction of the revenue; this it was one of the primary objects of the tariff act of October, 1890, to effect; to accomplish this the
28 duty on sugar, except on refined, which had amounted to fifty-three millions annually, was stricken off."

"Second. In connection with the foregoing, and as a part of the commercial policy of the United States, and because of the then existing foreign export bounties on sugar, which had amounted to about one cent per pound, and in order that the United States might secure a basis on which to appeal to foreign competitive sugar-producing countries to suspend their then existing repressing and restricting legislation on the export meat products of the United States, it enacted the countervailing sugar-bounty law of October, 1890."

"Third. Because of the repeal of the sugar-bounty law of October, 1890, and the reimposition of a lesser duty on foreign sugar than had prevailed prior to October, 1890, and because the larger part of the expense or cost of producing the raw material for the domestic sugar crop of 1894 had then (August 28th, 1894) been incurred, the Congress of the United States, in equitable and lawful liquidation of all claims against the Government in execution of the industrial, financial, and commercial power and policy vested in it by the Constitution, enacted the law of March 2nd, 1895."

3rd. The court erred in its rendition of any judgment herein either upon above findings of facts or conclusions of law thereon.

4th. The court erred in its rendition of any judgment herein.

5th. The court erred in holding that "the provision known as 'Schedule E—Sugar,' paragraphs 231, 232, 233, 234, & 235 of the act of the Congress of the United States of America entitled 'An act to reduce the revenue and equalize duties on the imports, and for other purposes,' approved October 1st, 1890, being chapter 1244, 26th Statutes at Large, pages 583 & 584," were valid and within the constitutional power of the Congress of the United States to enact.

6th. The court erred in holding that "the provision known
29 as 'bounty on sugar' of the act of Congress of the said United States entitled 'An act making appropriations for sundry civil expenses of the Government for the fiscal year ending June 30th, eighteen hundred and ninety-six, and for other purposes,' approved March 2nd, 1895, being chapter 189, 28th Statutes at Large, pages 933 & 934," were valid and within the constitutional power of the Congress of the United States to enact.

7th. The court erred in including in the findings of fact the first, second, and third paragraphs thereof.

8th. The court erred in permitting the introduction by plaintiff over defendant's objection (bill of exceptions No. 1) of a mass of evidence

consisting of copies of documents on file in the Departments of the various bureaus and offices of the United States at Washington, D. C., consisting, among other papers, of statutes, public documents, extracts from Congressional Records, and copies of letters to officers of the Departments at Washington, D. C., which said evidence is contained in typewritten folios, filed with the record in this cause in the clerk's office of the said circuit court for the eastern district of Louisiana, and is here referred to for greater certainty of description of said evidence which was admitted over defendant's objection, and for better certainty of the description of said evidence in this instant assignment of error; and the court further erred in its findings of fact, paragraphs I, II, & III of said find-
30 ings, based upon said above-described evidence admitted over defendant's objections.

9th. The court erred in refusing to allow and grant defendant's motion to strike from the findings of fact filed the paragraphs numbered I, II, & III, for the reasons more fully stated in said motion to strike, made part hereof of this instant assignments of error as if fully recited herein for greater certainty (bill of exceptions No. 2).

10th. The court erred in finding any other conclusions of law or findings of fact other than such as were presented by the pleadings and the admissions of facts therein contained, involving only the construction or application of the Constitution of the United States to the legislation of Congress, which is fully recited and set forth in the answer of defendant herein, in which is involved the constitutionality of said acts of Congress of October 1st, 1890, and said act of Congress of March 2nd, 1895, and that the Congress of the United States had the power, under the Constitution of the United States, to enact legislation of this character, and to appropriate money for the purposes stated in the sugar-bounty paragraphs of the said acts of October 1st, 1890, and said act of March 2nd, 1895; and the court further erred in holding such legislation of the said Congress constitutional and within the grant of its power, under said Constitution, to so legislate.

(Signed) F. B. EARHART,
U. S. Attorney, E. D. Louisiana.

31 *Petition and order for writ of error, filed January 20th, 1896.*

United States circuit court, eastern district of Louisiana.

THE REALTY COMPANY, PLAINTIFF,
vs.
THE UNITED STATES, DEFENDANT. } No. 12450.

To the Honorable the Chief Justice and Associate Justices of the Supreme Court of the United States:

Now the defendant in the above entitled and numbered cause comes through the attorney of record of said defendant, and complaining that in the record and proceedings and the rendition of the judgment in the said cause between the said plaintiff, The Realty Company, and said defendant, The United States, tried in the circuit court of the United States for the fifth circuit and eastern district of Louisiana on the eighteenth day of December, A. D. eighteen hundred and ninety-five, holding ses-

sion at New Orleans, Louisiana, at the November term of 1895 thereof, and which judgment was rendered against said defendant on the said eighteenth day of December, A. D. eighteen hundred and ninety-five, and signed and filed on the nineteenth day of December, A. D. eighteen hundred and ninety-five, by said honorable circuit court, manifest error has intervened to the great damage and injury of the said defendant, The United States of America, and that said defendant is aggrieved thereby.

That there was and is involved in said case the construc-
32 tion and application of the Constitution of the United States of the power of Congress to enact sugar-bounty provisions of the act of the Congress of the United States approved October 1st, 1890, and the sugar-bounty provisions of the act of said Congress of March 2nd, 1895, and in which said case the constitutionality of said laws of the United States are drawn in question, all of which will more fully appear in the assignments of error herewith filed and made part hereof.

Whereupon the defendant, The United States of America, prays for the allowance of a writ of error and such other process as may cause the same to be corrected by the honorable the Supreme Court of the United States.

(Signed) F. B. EARHART,
U. S. Attorney, E. D. of Louisiana.

JAN'Y 20th, 1896.

Allowed.
(Signed) DON A. PARDEE, *Circuit Judge.*

33 UNITED STATES OF AMERICA, *ss:*

The President of the United States, to the honorable the judges of the circuit court of the United States in and for the fifth circuit, and holding sessions for the eastern district of Louisiana, greeting:

Because, in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court, before you, or some of you, between The Realty Company, plaintiff, and The United States, defendant, manifest error hath happened to the great damage of said defendant, The United States of America, as by the complaint of said defendant appears, not only of error involving the introduction of evidence, findings of fact, and conclusions of law therein, as well as error in refusing to strike such findings of fact and such other error as appears by defendant's said complaint and the assignments of error therein, but also of error as appears by said complaint involving the construction and application of the Constitution of the United States to, as well as the constitutionality of, the sugar-bounty clauses of the enactments by the Congress of the United States of America of the acts of said Congress approved October 1st, 1890, and March 2nd, 1895, and the power of said Congress to enact legislation of this character, all of which in said cause are drawn in question as by the complaint of said defendant, The United States of America, appears, from all of which manifest error hath happened to the great damage of said defendant, as by said defendant's complaint appears.

We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do

command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington within ten days from the date hereof, in the said Supreme Court, to be then and there held; that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness, the Honorable Melville W. Fuller, Chief Justice of the said Supreme Court of the United States, this twentieth day of January, in the year of our Lord one thousand eight hundred and ninety-six.

[SEAL.] E. R. HUNT,
Clerk of the United States Circuit Court
for the Eastern District of Louisiana.

34 (Indorsed:) United States circuit court. No. 12450. The Realty Company, plaintiff, versus The United States, defendant. Writ of error. Copy of a writ of error lodged in the clerk's office of the circuit court of the United States for the fifth circuit and eastern district of Louisiana, in pursuance of the statute in such case made and provided, this 20 day of January, one thousand eight hundred and ninety-six. F. B. Earhart, attorney of plaintiff in error. Filed January 20, 1896. E. R. Hunt, clerk.

35 The United States of America, circuit court of the United States, eastern district of Louisiana.

The President of the United States to The Realty Company, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at the city of Washington, within ten days from date hereof, pursuant to a writ of error granted this day and filed in the clerk's office of the circuit court of the United States for the fifth circuit and eastern district of Louisiana, wherein The United States of America is plaintiff in error and The Realty Company is the defendant in error, to show cause, if any there be, why the judgment rendered against the said United States of America, as in said judgment mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Melville W. Fuller, Chief Justice of the United States, this 20th day of January, in the year of our Lord one thousand eight hundred and ninety-six.

DON A. PARDEE, *Circuit Judge.*

36 (Indorsed:) No. 12450. United States circuit court, eastern district of Louisiana. No. 12450. The Realty Company vs. The United States. Citation. Marshal's return. Filed January 20, 1896. E. R. Hunt, clerk.

Copy of order, writ of error, and assignment of errors waived, and service of copy of citation on writ of error waived and service hereby accepted.

New Orleans, Jan'y 20th, 1896.

JAMES D. HILL,
THOS. J. SEMMES,
JOS. H. CHOATE,
CHAS. F. MANDERSON,
Attys. for The Realty Company.

Filed Jan'y 20, 1896.

E. R. HUNT, *Clerk.*

37 United States of America, circuit court of the United States, fifth circuit and eastern district of Louisiana.

CLERK'S OFFICE.

I, Edward R. Hunt, clerk of the circuit court of the United States for the fifth circuit and eastern district of Louisiana, do hereby certify that the foregoing 32 pages contain and form a full, complete, true, and perfect transcript of the record and proceedings had, together with all the evidence adduced on the trial, excepting copies of documents and extracts from documents and papers referred to in bill of exceptions No. 1 and offered and introduced in evidence on the trial of this cause for and on behalf of plaintiff, in the case of The Realty Company vs. The United States, No. 12450 of the docket of the said court.

Witness my hand and the seal of said court, at the city of New Orleans, this 23rd day of January, A. D. 1896.

[SEAL.] E. R. HUNT, *Clerk.*

I, Charles Parlange, United States judge for the eastern district of Louisiana, do certify that Edward R. Hunt, whose name is signed to the above certificate as clerk of the circuit court of the United States for the fifth circuit and eastern district of Louisiana, was, at the time of signing said certificate, and is now the clerk of said court; that said certificate is in due form of law, and that full faith and credit are due to his official attestations as such clerk.

Given under my hand, at the city of New Orleans, in said district, this 23rd day of January, A. D. 1896.

CHARLES PARLANGE, *Judge.*

(Indorsement on cover:) Case No. 16160. Term No., 870. The United States, plaintiff in error, vs. The Realty Company. E. Louisiana C. C. U. S. Filed January 27th, 1896.

163 U.S. 427

TRANSCRIPT OF RECORD.

163-427

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1895.

No. 869.

THE UNITED STATES, PLAINTIFF IN ERROR,

vs.

ANDREW H. GAY.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF LOUISIANA.

FILED JANUARY 27, 1896.

(16159.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1895.

No. 869.

THE UNITED STATES, PLAINTIFF IN ERROR,

vs.

ANDREW H. GAY.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF LOUISIANA.

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a United States of America, circuit court of the United States, eastern district of Louisiana.

THE UNITED STATES, PLAINTIFF IN ERROR,
versus
ANDREW H. GAY, DEFENDANT IN ERROR. } No. 12451.

Ferdinand B. Earhart, esq., United States district attorney, for plaintiff in error; Messrs. Jas. D. Hill, Thomas J. Semmes, Jos. H. Choate, and Chas. F. Manderson for defendant in error.

Writ of error from the Supreme Court of the United States of America to the circuit court of the United States for the eastern district of Louisiana, returnable within ten (10) days from the twentieth (20th) day of January, A. D. 1896, at the city of Washington, D. C.

Transcript of record.

1 (Fol. 1) United States circuit court, eastern district of Louisiana. Petition filed November 5, 1895. In the circuit court of the United States for the fifth circuit in the eastern district of Louisiana.

ANDREW H. GAY, PLAINTIFF,
against
THE UNITED STATES, DEFENDANT.

Andrew H. Gay, the plaintiff in the above-entitled action, complains of the United States, the defendant herein, and for a cause of action alleges as follows:

(2) First. That the said plaintiff resides in the parish of Iberville, in the State of Louisiana, and within the eastern district of Louisiana, and is and at the times hereinafter stated was a producer and manufacturer of sugar at said place from sugar cane grown or produced within the United States, and that prior to the 1st day of July, 1894, he complied with the provisions of the bounty law as contained in Schedule E of the tariff act of October 1st, 1890, by filing with the Commissioner of Internal Revenue a notice of the place where he intended to produce such sugar, together with a general description of the machinery and methods to be employed by him, with an esti-

(3) mate of the amount of such sugar proposed to be produced in the

2 year then next ensuing, which application was accompanied by a bond under a penalty and with sureties approved by the Commissioner of Internal Revenue, conditioned that he would faithfully observe all rules and regulations that should be prescribed for such manufacture and production of sugar, whereby he would have been entitled to receive a license as provided for in said act of October 1st, 1890, to produce sugar from sugar cane grown within the United States, at the place, namely, Iberville, aforesaid, and with the machinery and methods

(4) described in his application, for a period of one year from the 1st day of July, 1894.

Second. That within the period above mentioned the said plaintiff actually manufactured and produced at said place one million ninety-four thousand seven hundred and seventy-eight pounds of sugar, testing not less than eighty degrees by the polariscope from sugar cane grown

and produced within the United States between the 1st day of October, 1894, and the 1st day of July, 1895, whereby the plaintiff became entitled to receive from the defendant the bounty of eight-tenths of a cent
(5) per pound on said sugars in accordance with the act of Congress entitled "An act making appropriations for sundry civil expenses of the Government for the fiscal year ending June 30, 1896, and for other purposes," approved March 2nd, 1895, amounting to the sum of eight thousand seven hundred and fifty-eight dollars and twenty-two cents.

Third. That thereafter, and on the 9th day of August, 1895, the said plaintiff presented to the Commissioner of Internal Revenue,
3 through the collector of the district of Louisiana in which said sugar was produced, his claim for said bounty, which claim was only examined and certified to be correct by the said collector and by him transmitted to the office of the Commissioner of Internal Revenue under date of August 13th, 1895, all which appears by the certificate hereto annexed marked Schedule No. 1.

Fourth. That thereafter, and on the 29th of October, 1895, the said claim for said bounty on said sugar was examined, allowed, and approved by the Commissioner of Internal Revenue, and thereupon the plaintiff duly presented the said claim so approved to the Secretary of the Treasury, and demanded payment by the defendant of the said sum of eight thousand seven hundred and fifty-eight dollars and twenty-two cents, but the Secretary has declined and refused to pay the same.

Wherefore the plaintiff demands judgment against the defendant for the said sum of eight thousand seven hundred and fifty-eight dollars and twenty-two cents, with interest from the 29th day of October, 1895, and the costs of this action.

(Signed) JAS. D. HILL,
THOS. J. SEMMES,
JOS. H. CHOATE,
CHAS. F. MANDERSON,
Of Counsel.

Andrew H. Gay, being duly sworn, deposes and says, that he is the plaintiff in the foregoing complaint named; that he has read the
4 said petition and knows the contents thereof, and that the same is true according to his information and belief. And further sayeth not.

(Signed) ANDREW H. GAY.

Sworn to and subscribed before me this 4th day of November, 1895.

[SEAL.] (Signed) E. R. HUNT,
U. S. Commissioner.

Marshal's return.

Received by U. S. marshal, New Orleans, La., November 5, '95, and on the same day I served copy hereof on the United States by handing the same to Hon. F. B. Earhart, U. S. attorney, in person, in the city of New Orleans, Louisiana.

(Signed) J. V. GUILLOTTE,
U. S. Marshal.
By ALCÉE LEBLANC, *Dy.*

Exhibit marked Schedule No. 1, filed with petition November 5, 1895.

G. W. W.

UNITED STATES OF AMERICA, TREASURY DEPARTMENT,
October 31, 1895.

Pursuant to section 882 of the Revised Statutes I hereby cer-
5 tify that the annexed paper, being a schedule of a claim for bounty on sugar which has been examined and allowed to And. H. Gay, is a true and correct copy of a schedule on file in this Department.

In witness where' I have hereunto set my hand and caused
[SEAL.] the seal of the Treasury Department to be affixed on the day and year first above written.

(Signed) W. E. CURTIS,
Acting Secretary of the Treasury.

M. H. W.

[Schedule No. 1. Office Form No. 323.]

Schedule of claims for bounty on sugar which have been examined and allowed.

District.	No. of claim.	Claimants.	Amount.
Louisiana	42	Gay, Andrew H	$8,758.22
Total			$8,758.22

I hereby certify that the foregoing claims for bounty on sugar have been examined and allowed.

(Signed) G. W. WILSON,
Acting Commissioner.

OFFICE OF INTERNAL REVENUE,
October 29, 1895.

H. C. J.

(Endorsed:) Schedule No. 1 of approved claims for bounty on sugar amounting to $8,758.22. Treasury Department, Office of Commissioner of Internal Revenue, October 29th, 1895. Respectfully referred to the Auditor for the Treasury Department. (Signed) E. C. Johnson, for deputy commissioner.

6 *Exhibit filed with petition November 5th, 1895.*

G. W. W.

UNITED STATES OF AMERICA, TREASURY DEPARTMENT,
November 1, 1895.

Pursuant to section 882 of the Revised Statutes I hereby certify that the annexed paper is a full and true copy of a claim for bounty on sugar of domestic production, made by Andrew H. Gay, on file in this Department.

In witness whereof I have hereunto set my hand and caused
[SEAL.] the seal of the Treasury Department to be affixed on the day and year first above written.

(Signed) W. E. CURTIS,
Acting Secretary of the Treasury.

W. R.

7 [Form No. 301—Revised.]

UNITED STATES INTERNAL REVENUE.

Claim for bounty on sugar of domestic production.

[Act of March 2, 1895.]

Claim of Andrew H. Gay, producer of sugar from sugar cane. Name of plantation or place of production, Augusta plantation; post-office address, Plaquemine, La. Please send draft to me at above address (Note 1) .

STATE OF LOUISIANA, *County or Parish of Iberville, ss:*

I, Andrew H. Gay, of the State and county aforesaid, being duly sworn, deposes and says that (Note 2) .

That he was engaged in the business of producing sugar from (Note 3) sugar cane grown within the United States at the factory situated at Augusta plantation, from the 1st day of October, 1894, to 1st day of July, 1895.

That within the period above mentioned he was not engaged in refining sugars which had been imported into the United States, or produced in the United States, upon which the bounty herein provided had already been paid or applied for, and that no such sugars were refined at the factory aforesaid during the period above mentioned.

That he has complied with the provisions of the bounty law as contained in Schedule E of the tariff act of October 1, 1890, by filing the notice, application for license, and bond therein required with the Commissioner of Internal Revenue prior to July 1, 1894, and that he is entitled to receive a license (or did receive a license, No. 205), as provided for in said act.

That within the period aforesaid the following described packages of sugar, containing 1,094,778 pounds, and testing not less than 80° by the polariscope, were produced by Andrew H. Gay, Augusta plantation, at said factory from (Note 3) sugar cane grown within the United States, and that no bounty has been paid or applied for on said sugar, or any part thereof, and he is justly entitled to the bounty thereon, amounting to eight thousand seven hundred and fifty-eight $\frac{22}{100}$ dollars ($8,758\frac{22}{100}$), under the provisions of the act of Congress of March 2, 1895, as shown by the (Note 4) original commercial certificates of the weights and classification (or the returns of the revenue) hereto attached and made a part of this claim, and I now ask and demand the same.

8 *Description of packages.*

[Testing not less than 80° by polariscope.]

Lot number.	No. bbls.	Kind of packages and serial Nos. (Note 5.)	Gross weight, pounds.	Tare, pounds.	Net weight, pounds.
1	23	1 to 23	8,202	475	7,727
2	27	24–50	9,969	559	9,410
3	51	51–101	18,279	1,064	17,215
4	55	102–156	19,889	1,136	18,753
5	52	157–208	18,595	1,066	17,529
6	23	209–231	8,381	470	7,911
7	64	232–295	23,272	1,317	21,955
8	65	296–360	23,751	1,336	22,415
9	52	361–412	18,937	1,077	17,860
10	69	413–481	24,418	1,421	22,997
11	69	482–550	24,980	1,421	23,559
12	73	551–623	25,871	1,503	24,368
13	49	624–672	16,930	1,028	15,902
14	37	673–709	13,169	772	12,397
15	88	710–797	31,965	1,815	30,150
16	67	798–864	24,458	1,389	23,069
17	30	865–894	10,960	620	10,340
18	65	895–959	23,048	1,349	21,699
19	41	960–1000	14,561	855	13,706
20	46	1001–1046	17,073	950	16,123
21	48	1047–1094	17,137	1,000	16,137
22	65	1095–1159	23,821	1,353	22,468
23	42	1160–1201	14,929	874	14,055
24	37	1202–1238	13,622	765	12,857
25	37	1239–1275	13,915	772	13,143
26	67	1276–1342	24,473	1,400	23,073
27	37	1343–1379	13,490	771	12,719
28	39	1380–1418	14,867	813	14,054
29	57	1419–1475	20,641	1,187	19,454
30	61	1476–1536	22,141	1,272	20,869
31	37	1537–1573	14,111	772	13,339
32	59	1574–1632	21,667	1,241	20,426
33	37	1633–1669	13,926	773	13,153
34	54	1670–1723	20,033	1,138	18,895
35	46	1724–1769	17,465	969	16,496
36	72	1770–1841	26,800	1,527	25,273
37	54	1842–1895	19,693	1,123	18,570
38	40	1896–1935	15,239	838	14,401
39	109	1936–2044	40,275	2,258	38,017
40	30	2045–2074	10,951	619	10,332
41	110	2075–2184	40,097	2,286	37,811
42	64	2185–2248	23,337	1,338	21,999
43	46	2249–2294	16,716	962	15,754
44	89	2295–2383	31,663	1,848	29,815
45	103	2384–2486	37,334	2,135	35,199
46	46	2487–2532	16,430	951	15,479
47	92	2533–2624	32,397	1,927	30,470
48	63	2625–2687	22,012	1,321	20,691
49	56	2688–2743	20,557	1,173	19,384
50	101	2744–2844	35,743	2,100	33,643
51	41	2845–2885	15,515	852	14,663
52	118	2886–3003	41,631	2,468	39,163
53	100	3004–3103	36,476	2,111	34,365
54	93	3104–3196	35,491	1,965	33,526
	3,196	.....	1,161,303	66,525	1,094,778

9

Total number of packages 3,196; total net weight of sugar testing not less than 80°, 1,094,778 pounds; total bounty due on sugar described and included in this claim, 88,758$\frac{22}{100}$.

(Note 6.) Subscribed and sworn to before me this 9th day of Aug., 1895.

(Signed) ANDREW H. GAY.

S. L. WALKER,
Deputy Coll.

10 *Collector's certificate.*

I hereby certify that the foregoing claim has been carefully examined, and that from the reports and certificates attached hereto the facts are as stated herein, and I believe that the claim is just and true; that no claim has heretofore been made for bounty upon the sugar herein described; that claimant is not indebted to the United States for internal-revenue taxes, and that the amount of eight thousand seven hundred fifty-eight $\frac{22}{100}$ dollars should be paid to Andrew H. Gay as bounty on the sugar mentioned and described in the foregoing affidavit.

J. J. CARTER,
Collector *District of La.*

Dated August 13, 1895.

NOTE 1.—If claimant wishes the draft sent to any other address than his post-office address as given, it should be stated here, and the words "above address" erased.

NOTE 2.—If a member of a firm, state the fact here. In case the business is under the control of an agent, manager, or superintendent, and the proprietor is not present to make the claim, or, in case of a firm, no member is present, the claim may be sworn to by such agent, manager, or superintendent in the name of a principal. In case a claim is made by an assignee of an insolvent, or by a trustee or legal representative of a deceased sugar producer, a certified copy of authority to act in such capacity must accompany the claim.

NOTE 3.—Here insert name of material from which sugar is produced.

NOTE 4.—The commercial certificates or returns of the weighing and inspecting officers, showing weights and classification, should accompany the claim and be securely fastened thereto and made a part thereof.

NOTE 5.—In describing the packages by serial numbers the list should commence with the lowest number included in the lot upon which bounty is applied for, and the remaining numbers should follow in numerical order. For purposes of ready identification of the packages upon which bounty is claimed, with the sugar reported produced, the serial numbers, when practicable, should be stated inclusively. If separations occur which divide the packages into two or more groups bearing consecutive numbers, each group should be described by its inclusive numbers, and no package bearing a number which may be combined in consecutive order with the number of any other package included in the claim should be described by itself. If the space for describing packages is insufficient to contain a record of all packages upon which bounty is claimed, additional sheets for description of packages may be filed in schedule form as supplementary to and constituting a part of the claim.

NOTE 6.—Affidavits may be made before a collector, deputy collector, or any officer authorized to administer oaths. They may be made before a collector or deputy collector without fee. Any other officer administering an oath or affirmation must show, by his seal of office or certificate from the proper authority, that he is qualified to do so. An officer in signing a jurat should give the title of his office.

GENERAL INSTRUCTIONS.

Claims for bounty can not be transferred or assigned. Such assignments are prohibited by section 3477, U. S. Revised Statutes.

Any person not entitled to the bounty who shall apply for or receive the same becomes guilty of a misdemeanor and liable to a fine not exceeding five thousand dollars, or imprisonment not exceeding five years, or both.

11 (Indorsed:) 12451. (Form 301—revised.) United States internal revenue. No. 42, schedule 1. Claim for bounty on sugar. Andrew H. Gay, claimant. District of La. Amount of claim, $8,758\frac{22}{100}$. Treasury Department, Office of Internal Revenue, October 14, 1895. Examined and recommended for approval for the sum of $8,758\frac{22}{100}$. E. C. Johnson, chief clerk, int. rev.

12 *Affidavit of Jas. D. Hill, filed Nov. 8, 1895.*

UNITED STATES OF AMERICA,
Eastern District of Louisiana:

Personally appeared before the undersigned authority, James D. Hill, who, being duly sworn, says that on the 5th day of November, 1895, a copy of the petition in the case of Andrew H. Gay vs. The United States, No. 12451, of the docket of the U. S. circuit court, was served in his presence upon the United States district attorney, Ferdinand B. Earhart, for the eastern district of Louisiana, by Alcée LeBlanc, deputy U. S. marshal for said district, and that a copy of said petition was mailed by registered letter by him to the Attorney-General of the United States on said 5th day of November, A. D. 1895.

(Signed) JAMES D. HILL.

Subscribed and sworn before me November 8, 1895.

(Signed) H. J. CARTER,
Commissioner United States Circuit Court,
Eastern District of Louisiana.

13 *Answer filed December 12, 1895.*

In the circuit court of the United States for the fifth circuit and eastern district of Louisiana.

ANDREW H. GAY, PLAINTIFF,
vs.
THE UNITED STATES, DEFENDANT. } No. 12451.

Now comes the United States of America, made defendant herein, and by Ferdinand B. Earhart, United States attorney for the eastern district of Louisiana, in his said official capacity herein representing said defendant, pleads to said plaintiff's petition herein as follows:

1st. Defendant admits all the allegations of plaintiff's petition excepting such as are hereinafter denied.

2nd. Defendant denies the indebtedness claimed in plaintiff's petition:

First. Because the provisions known as "Schedule E—sugar," paragraphs 231, 232, 233, 234, & 235, of the act of the Congress of the United States of America entitled "An act to reduce the revenue and equalize duties on imports, and for other purposes," approved October 1st, 1890, being chapter 1244, 26th Statutes at Large, pages 583 & 584,

have not only been repealed by the said Congress of the United States by the provisions of paragraph 182, "Schedule E—sugar," of an act of said Congress entitled "An act to reduce taxation, to provide revenue for the Government, and for other purposes," approved August 27th, 1894, being chapter 349, 28th Statutes at Large, pages 509 to 528, but said provisions of the said "Schedule E—sugar," of said act of October 1st, 1890, are violative of the provisions of the Constitution of said United States and are void, and that no power to enact said legislation of this character is vested in the Congress of the said United States by the Constitution thereof.

14 Second. Because all of the provisions known as "Bounty on sugar" of the act of the Congress of the said United States entitled "An act making appropriations for sundry civil expenses of the Government for the fiscal year ending June 30th, eighteen hundred and ninety-six, and for other purposes," approved March 2nd, 1895, being chapter 189, 28th Statutes at Large, pages 933 and 934, are violative of the provisions of the Constitution of the said United States and are void, and that no power to enact said legislation of this character is vested in the Congress of the said United States by the Constitution thereof.

Wherefore the premises considered, the said defendant, the said United States, prays that the said hereinbefore stated provisions of the acts of the Congress of the United States known as and included in "Schedule E—sugar," of the said act approved October 1st, 1890, and the said provisions known as "Bounty on sugar" of the said act of Congress entitled "An act making appropriations for sundry civil expenses of the Government for the fiscal year ending June 30th, 1896, and for other purposes," approved March 2nd, 1895, be decreed contrary to and violative of the provisions of the Constitution of the said United States and null and void, and that no power to enact legislation of this character is vested in the Congress of the said United States by the Constitution thereof, and accordingly that there be judgment in favor of the said United States, defendant, and against the said plaintiff, rejecting said plaintiff's demand herein, and for all costs and general relief as in duty bound defendant will ever pray.

(Signed) F. B. EARHART,
United States Attorney.

15 *Agreement and statement of facts for plaintiff, filed Dec. 12, 1895.*

In the circuit court of the United States for the fifth circuit and the eastern district of Louisiana.

ANDREW H. GAY, PLAINTIFF,
vs.
THE UNITED STATES, DEFENDANT. } No. 12451. U. S. circuit court.

To the end of simplifying and expediting trial and final decision of the above-entitled action, it is stipulated that for the purposes of said trial the following statement of facts may be taken to be true:

1. The claimant has produced sugar to the amount and of the quality alleged in the petition herein, in compliance with the provisions of the bounty law, as contained in Schedule "E" of the tariff act of October

1st, 1890, and of the sundry civil bill of March 2d, 1895, and claimant will be entitled to a warrant and payment of the amount herein sued for in the event that the bounty enactment of the sundry civil bill, approved March 2d, 1895, be sustained by the courts.

2. The money is in the Treasury to meet the payment of the appropriation of $238,289.08, for bounty earned prior to the 28th of August, 1894, and of the appropriation of $5,000,000 for bounty earned between that date and the 30th of June, 1895.

16 3. It is agreed that as to copies of all statistics, messages, books, records, papers, and documents on file in any of the Departments, or excerpts from the same required in evidence by either party to this suit, authentication thereof as required under sections 882 to 908, U. S. Revised Statutes, is hereby waived, and such copies shall be admitted in evidence to the same extent as if so certified and authenticated.

(Signed) JAS. D. HILL,
THOS. J. SEMMES,
JOS. H. CHOATE,
CHAS. F. MANDERSON,
Of Counsel for Pet'r.

(Signed) F. B. EARHART,
U. S. Att'y, E. D. La.

Motion to fix for hearing entered and filed Dec. 13th, 1895.

United States circuit court, eastern district of Louisiana.

ANDREW H. GAY, PLAINTIFF,
vs.
THE UNITED STATES, DEFENDANT. } No. 12451.

On motion of F. B. Earhart, United States attorney, it is ordered that this case be assigned for hearing on the 18 day of December, 1895.

17 *Hearing of cause, evidence offered, and judgment directed by the court to be entered for plaintiff. Extract from the minutes, November term, 1895.*

NEW ORLEANS, *December 18th, 1895.*

Court met pursuant to adjournment. Present, Hon. Don A. Pardee, circuit judge.

ANDREW H. GAY
vs.
THE UNITED STATES. } No. 12451.

This cause was this day called for trial.

Present: Thomas J. Semmes and J. D. Hill, of counsel for the plaintiff; Ferdinand B. Earhart, U. S. attorney, for the United States.

Whereupon the pleadings were read and counsel for plaintiff offered in evidence: Affidavit of James D. Hill, marked A; agreement, etc., marked B; certified copy of Andrew H. Gay's claim for bounty, marked

C; certified copy of action of Commissioner of Internal Revenue on said claim, marked D; copies of acts, documents, etc., on file in Department of Government as comprised in note of evidence, marked E.

The cause was then argued by the attorneys for the respective parties; on consideration whereof the court directed judgment to be entered for the plaintiff—the decree and findings of fact to be prepared and submitted.

18 *Bill of exceptions No. 1, filed Dec. 18, 1895.*

United States circuit court, eastern district of Louisiana.

ANDREW H. GAY, PLAINTIFF,
vs.
THE UNITED STATES, DEFENDANT. } No. 12451.

Be it remembered that on the eighteenth day of December, A. D. 1895, on the trial of the above-entitled and numbered cause, plaintiff offered in evidence certain copies of documents on file in the Department of the various bureaus and offices of the United States at Washington, D. C., consisting among other papers of copies of statutes, public documents, extracts from Congressional Records, and copies of letters to officers of the Departments at Washington, D. C., to which said offer defendant, through the United States attorney, herein representing siad defendant, objected, not only objecting to the introduction of said evidence, but of all evidence not included in and forming part of the admissions in the answer and pleadings of said defendant, the United States, or included in and forming part of such evidence as may be introduced on this trial by virtue of any written agreement heretofore entered into by the parties plaintiff and defendant herein, and this honorable court having overruled the said objections of defendant to the introduction of said evidence herein referred to, defendant, through the United States attorney, excepted to said
19 rulings, and now presents this the bill of exceptions of said defendant to this honorable court for signature, &c.

(Signed) DON M. PARDEE, *Circuit Judge.*

Rendition of written judgment and findings of fact.—Extract from the minutes, November term, 1895.

NEW ORLEANS, *December 19th, 1895.*

Court met pursuant to adjournment. Present, Hon. Don A. Pardee, circuit judge.

ANDREW H. GAY, PLAINTIFF,
vs.
THE UNITED STATES, DEFENDANT. } No. 12451.

The court, upon the evidence and after considering the same, makes the following

FINDINGS OF FACT:

I.

The conditions existing October, 1890, in the United States were that the United States had a "surplus" which was, and for several years had

been, regarded by the executive and legislative branches of the Government as menacing to the public welfare, sufficiently so to justify a radical reduction of the revenue; this it was one of the primary objects of the tariff act of October, 1890, to effect; to accomplish this the duty on sugar, except on refined, which had amounted to fifty-three millions annually, was stricken off.

20 II.

In connection with the foregoing, and as a part of the commercial policy of the United States, and because of the then existing foreign export bounties on sugar, which had amounted to about one cent per pound, and in order that the United States might secure a basis on which to appeal to the foreign competative sugar-producing countries to suspend their then existing repressive and restricting legislation on the export meat products of the United States, it enacted the countervailing sugar-bounty law of October, 1890.

III.

Because of the repeal of the sugar-bounty law of October, 1890, and the reimposition of a lesser duty on foreign sugar than had prevailed prior to October, 1890, and because the larger part of the expense or cost of producing the raw material for the domestic sugar crop of 1894 had then (August 28, 1894) been incurred, the Congress of the United States, in equitable and lawful liquidation of all claims against the Government and in execution of the industrial, financial, and commercial power and policy vested in it by the Constitution, enacted the law of March 2nd, 1895.

IV.

That the statements of the petition and exhibits attached are true, and the amount sued for is due by the United States, and the money appropriated to pay the same is in the Treasury.

CONCLUSIONS OF LAW.

21 And the court as conclusions of law determines that Congress had the power to appropriate money for the purposes stated in the sugar bounty paragraph of the act of October, 1890, and the act of March 2nd, 1895.

2. That the petitioner is entitled to recover judgment for the amount herein sued on.

JUDGMENT.

Wherefore, the premises considered, it is now ordered, adjudged, and decreed by the court that the petitioner, Andrew H. Gay, do have and recover from the United States the sum of eight thousand seven hundred and fifty-eight and $\frac{22}{100}$ dollars ($8,758.22), with costs of suit.

Motion to strike, filed Dec. 19, 1895.

In the circuit court of the United States for the eastern district of Louisiana.

ANDREW H. GAY
vs. } #12451.
THE UNITED STATES.

Motion to amend findings.

Now comes the defendant, the United States, and moves the court to strike out from the findings of fact filed the paragraphs thereof numbered I, II, and III, for the reason that the same relate to subjects within the judicial knowledge of courts and that therefore such declarations thereon are not properly findings of any facts as to which the conclusion of the trial court should be conclusive upon appellate tribunals, and for the further reason that, if true, such findings would not be relevant to any issues of fact in said action, but merely to the construction of certain ostensible acts of Congress.

22

Bill of exceptions No. 2, attached to motion to strike, &c., filed December 19, 1895.

United States circuit court, eastern district of Louisiana.

ANDREW H. GAY, PLAINTIFF,
vs. } No. 12451.
THE UNITED STATES, DEFENDANT.

Be it remembered that on this nineteenth day of December, A. D. 1895, the decree and findings of fact therein of this honorable court in the above-entitled and numbered cause was duly signed and ordered filed, whereupon defendant, The United States, moved the honorable the said circuit court of the United States for the fifth circuit and eastern district of Louisiana, to strike out from the said findings of fact the certain paragraphs I, II, and III, for the reasons which are more fully set forth in said motion to strike, which is made part hereof as if fully recited herein. Whereupon said honorable court denied said motion to strike. Whereupon said defendant, The United States, by the said United States district attorney, representing said defendant, excepted to each and every findings of fact as set forth in said paragraphs I, II, and III of said findings of fact and the conclusions of law thereon, and to the said rulings of said honorable court herein denying said motion to strike, and now presents to the court defendant's bill of exceptions to all of said rulings herein for signature, &c.

23

(Signed) DON A. PARDEE, *Circuit Judge.*

Judgment, decree, and findings of fact entered and filed, and signed in open court, December 19, 1895.

In the circuit court of the United States for the fifth circuit in the eastern district of Louisiana.

ANDREW H. GAY, PLAINTIFF,
vs.
THE UNITED STATES, DEFENDANT. } No. 12451. U. S. circuit court.

The court, upon the evidence and after considering the same, makes the following

FINDINGS OF FACT:

I.

The conditions existing October, 1890, in the United States were that the United States had a "surplus" which was, and for several years had been, regarded by the executive and legislative branches of the Government as menacing to the public welfare, sufficiently so to justify a radical reduction of the revenue. This it was one of the primary objects of the tariff act of October, 1890, to effect. To accomplish this the duty on sugar, except on refined, which had amounted to fifty-three millions annually, was stricken off.

II.

In connection with the foregoing, and as a part of the commercial policy of the United States, and because of the then existing foreign export bounties on sugar, which had amounted to about one cent per pound, and in order that the United States might secure a basis on which to appeal to foreign competitive sugar-producing countries to suspend their then existing repressive and restricting legislation on the export meat products of the United States, it enacted the countervailing sugar-bounty law of October, 1890.

III.

Because of the repeal of the sugar-bounty law of October, 1890, and the reimposition of a lesser duty on foreign sugar than had prevailed prior to October, 1890, and because the larger part of the expense or cost of producing the raw material for the domestic sugar crop of 1894 had then (August 28, 1894) been incurred, the Congress of the United States, in equitable and lawful liquidation of all claims against the Government and in execution of the industrial, financial, and commercial power and policy vested in it by the Constitution, enacted the law of March 2nd, 1895.

IV.

That the statements of the petition and exhibits attached are true, and the amount sued for is due by the United States, and the money appropriated to pay the same is in the Treasury.

CONCLUSIONS OF LAW.

I.

And the court as conclusions of law determines that Congress had the power to appropriate money for the purposes stated in the sugar-bounty paragraph of the act of October, 1890, and the act of March 2nd, 1895.

2. That the petitioner is entitled to recover judgment for the amount herein sued on.

JUDGMENT.

Wherefore, the premises considered, it is now ordered, adjudged, and decreed by the court that the petitioner, Andrew H. Gay, do have and recover from the United States the sum of eight thousand seven hundred and fifty-eight and $\frac{22}{100}$ dollars ($8,758.22), with costs of suit.

December 19, 1895.

(Signed) DON A. PARDEE, *Circuit Judge.*

26 *Assignment of error, filed January 20th, 1896.*

United States circuit court, eastern district of Louisiana.

ANDREW H. GAY, PLAINTIFF,
vs.
THE UNITED STATES, DEFENDANT. } No. 12451.

Now comes the defendant in the above-entitled and numbered cause and by F. B. Earhart, United States attorney for the eastern district of Louisiana, herein representing said defendant, the United States of America, and presents and files the following

Assignments of error:

1st. The court erred in its conclusion of law in holding—

"First. And the court as conclusions of law determines that Congress had the power to appropriate money for the purposes stated in the sugar-bounty paragraph of the act of October, 1890, and the act of March 2nd, 1895."

"Second. That the petitioner is entitled to recover judgment for the amount herein sued on."

2nd. The court erred in its conclusions of law based upon the following findings of fact:

"First. The conditions existing October, 1890, in the United States were that the United States had a 'surplus,' which was and for several years had been regarded by the executive and legislative branches of the Government as menacing to the public welfare, sufficiently so to justify a radical reduction of the revenue; this it was one of the primary objects of the tariff act of October, 1890, to effect; to accomplish this the
27 duty on sugar, except on refined, which had amounted to fifty-three millions annually, was stricken off."

"Second. In connection with the foregoing, and as a part of the commercial policy of the United States, and because of the then existing foreign export bounties on sugar, which had amounted to about one cent per pound; and in order that the United States might secure a basis on which to appeal to foreign competitive sugar-producing countries to suspend their then existing repressing and restricting legislation on the export meat products of the United States, it enacted the countervailing sugar bounty law of October, 1890."

"Third. Because of the repeal of the sugar-bounty law of October, 1890, and the reimposition of a lesser duty on foreign sugar than had prevailed prior to October, 1890, and because the larger part of the expense or cost of producing the raw material for the domestic sugar crop of 1894 had then (August 28th, 1894) been incurred, the Congress of the United States, in equitable and lawful liquidation of all claims against the Government in execution of the industrial, financial, and commercial power and policy vested in it by the Constitution, enacted the law of March 2nd, 1895."

3rd. The court erred in its rendition of any judgment herein either upon above findings of facts or conclusions of law thereon.

4th. The court erred in its rendition of any judgment herein.

5th. The court erred in holding that "the provision known as 'Schedule E—Sugar,' paragraphs 231, 232, 233, 234, & 235 of the act of the Congress of the United States of America, entitled 'An act to reduce the revenue and equalize duties on the imports and for other purposes,' approved October 1st, 1890, being chapter 1244, 26th Statutes at Large, pages 583 & 584," were valid and within the constitutional power of the Congress of the United States to enact.

6th. The court erred in holding that "the provision known
28 as 'bounty on sugar' of the act of Congress of the said United States, entitled 'An act making appropriations for sundry civil expenses of the Government for the fiscal year ending June 30th, eighteen hundred and ninety-six, and for other purposes,' approved March 2nd, 1895, being chapter 189, 28th Statutes at Large, pages 933 & 934," were valid and within the constitutional power of the Congress of the United States to enact.

7th. The court erred in including in the findings of fact the first, second, and third paragraphs thereof.

8th. The court erred in permitting the introduction by plaintiff over defendant's objection (bill of exceptions No. 1) of a mass of evidence consisting of copies of documents on file in the Departments of the various bureaus and offices of the United States at Washington, D. C., consisting among other papers of statutes, public documents, extracts from Congressional Records, and copies of letters to officers of the Departments at Washington, D. C., which said evidence is contained in typewritten folios, filed with the record in this cause in the clerk's office of the said circuit court for the eastern district of Louisiana, and is here referred to for greater certainty of description of said evidence which was admitted over defendant's objection, and for better certainty of the description of said evidence in this instant assignment of error; and the court further erred in its findings of fact, paragraphs I, II, & III of said find-
29 ings, based upon said above-described evidence admitted over defendant's objections.

9th. The court erred in refusing to allow and grant defendant's motion to strike from the findings of fact filed the paragraphs numbered I, II, & III, for the reasons more fully stated in said motion to strike, made part hereof of this instant assignments of error as if fully recited herein for greater certainty (bill of exceptions No. 2).

10th. The court erred in finding any other conclusions of law or findings of fact other than such as were presented by the pleadings and the admissions of facts therein contained, involving only the construction or application of the Constitution of the United States to the legislation of Congress, which is fully recited and set forth in the answer of defendant herein, in which is involved the constitutionality of said acts of Congress of October 1st, 1890, and said act of Congress of March 2nd, 1895, and that the Congress of the United States had the power, under the Constitution of the United States, to enact legislation of this character, and to appropriate money for the purposes stated in the sugar-bounty paragraphs of the said acts of October 1st, 1890, and said act of March 2nd, 1895; and the court further erred in holding such legislation of the said Congress constitutional and within the grant of its power, under said Constitution, to so legislate.

(Signed) F. B. EARHART,
U. S. Attorney, E. D. Louisiana.

30 *Petition and order for writ of error, filed January 20th, 1896.*

United States circuit court, eastern district of Louisiana.

ANDREW H. GAY, PLAINTIFF,
vs.
THE UNITED STATES, DEFENDANT. } No. 12451.

To the Honorable the Chief Justice and Associate Justices of the Supreme Court of the United States:

Now the defendant in the above entitled and numbered cause comes through the attorney of record of said defendant, and complaining that in the record and proceedings and the rendition of the judgment in the said cause between the said plaintiff, Andrew H. Gay, and said defendant, The United States, tried in the circuit court of the United States for the fifth circuit and eastern district of Louisiana on the eighteenth day of December, A. D. eighteen hundred and ninety-five, holding session at New Orleans, Louisiana, at the November term of 1895 thereof, and which judgment was rendered against said defendant on the said eighteenth day of December, A. D. eighteen hundred and ninety-five, and signed and filed on the nineteenth day of December, A. D. eighteen hundred and ninety-five, by said honorable circuit court, manifest error has intervened to the great damage and injury of the said defendant, The United States of America, and that said defendant is aggrieved thereby.

That there was and is involved in said case the construc-
31 tion and application of the Constitution of the United States of the power of Congress to enact sugar-bounty provisions of the act of the Congress of the United States approved October 1st, 1890, and the sugar bounty-provisions of the act of said Congress of March 2nd, 1895, and in which said case the constitutionality of said laws of the United States are drawn in question, all of which will more fully appear in the assignments of error herewith filed and made part hereof.

Whereupon the defendant, The United States of America, prays for the allowance of a writ of error and such other process as may cause the same to be corrected by the honorable the Supreme Court of the United States.

(Signed) F. B. EARHART,
U. S. Attorney, E. D. of Louisiana.

JAN'Y 20th, 1896.

Allowed.

(Signed) DON A. PARDEE, *Circuit Judge.*

32 UNITED STATES OF AMERICA, *ss:*

The President of the United States, to the honorable the judges of the circuit court of the United States in and for the fifth circuit, and holding sessions for the eastern district of Louisiana, New Orleans division, greeting:

Because, in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court, before you or some of you, between Andrew H. Gay, plaintiff, and the United States, defendant, manifest error hath happened to the great damage of said defendant, the United States of America, as by the complaint of said defendant appears, not only of error involving the introduction of evidence, findings of fact, and conclusions of law therein, as well as error in refusing to strike such findings of fact and such other error as appears by defendant's said complaint and the assignments of error therein, but also of error as appears by said complaint involving the construction and application of the Constitution of the United States to, as well as the constitutionality of, the sugar-bounty clauses of the enactments by the Congress of the United States of America of the acts of said Congress approved October 1st, 1890, and March 2nd, 1895, and the power of said Congress to enact legislation of this character, all of which in said cause are drawn in question as by the complaint of said defendant, the United States of America, appears from all of which manifest error hath happened to the great damage of said defendant, as by said defendant's complaint appears.

We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid, in this behalf do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all the things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington within ten days from the date hereof, in the said Supreme Court, to be then and there held; that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what, of right, and according to the laws and customs of the United States, should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the said Supreme Court of the United States, this twentieth day of January, in the year of our Lord one thousand eight hundred ninety-six.

[SEAL.] E. R. HUNT,
Clerk of the United States Circuit Court
for the Eastern District of Louisiana.

33 (Indorsed:) United States circuit court. No. 12451. Andrew H. Gay, plaintiff, versus The United States, defendant. Writ of error. Copy of a writ of error lodged in the clerk's office of the circuit court of the United States for the fifth circuit and eastern district of Louisiana, in pursuance of the statute in such cases made and provided, this 20 day of January, one thousand eight hundred and ninety-six. F. B. Earhart, attorney of plaintiff in error. Filed Jan'y 20, 1896. E. R. Hunt, clerk.

34 The United States of America, circuit court of the United States, eastern district of Louisiana.

The President of the United States to Andrew H. Gay, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at the city of Washington within ten days from date hereof, pursuant to a writ of error granted this day and filed in the clerk's office of the circuit court of the United States for the fifth circuit and eastern district of Louisiana, wherein the United States of America is plaintiff in error, and Andrew H. Gay is the defendant in error, to show cause, if any there be, why the judgment rendered against the said United States of America, as in said judgment mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Melville W. Fuller, Chief Justice of the United States, this 20th day of January, in the year of our Lord one thousand eight hundred and ninety-six.

DON A. PARDEE, *Circuit Judge.*

35 (Indorsed:) No. 12451. United States circuit court, eastern district of Louisiana. No. 12451. Andrew H. Gay vs. The United States. Citation. Marshal's return. Filed January 20, 1896. E. R. Hunt, clerk.

Copy of order, writ of error, and assignment of errors waived; and service of copy of citation on writ of error waived, and service hereby accepted.

New Orleans, Jan'y 20th, 1896.

JAMES D. HILL,
THOS. J. SEMMES,
JOS. H. CHOATE,
CHAS. F. MANDERSON,
Attorneys for Andrew H. Gay.

Filed Jan'y 20, 1896.

E. R. HUNT, *Clerk.*

36 United States of America, circuit court of the United States, fifth circuit and eastern district of Louisiana.

CLERK'S OFFICE.

I, Edward R. Hunt, clerk of the circuit court of the United States for the fifth circuit and eastern district of Louisiana, do hereby certify that the foregoing 31 pages contain and form a full, complete, true, and perfect transcript of the record and proceedings had, together with all the

evidence adduced on the trial, excepting copies of documents and extracts from documents and papers referred to in bill of exceptions No. 1, and offered and introduced in evidence on the trial of this cause for and on behalf of plaintiff, in the case of Andrew H. Gay vs. The United States, No. 12451 of the docket of said court.

Witness my hand and the seal of said court, at the city of New Orleans, this 23rd day of January, A. D. 1896.

[SEAL.] E. R. HUNT, *Clerk.*

I, Charles Parlange, United States judge for the eastern district of Louisiana, do certify that Edward R. Hunt, whose name is signed to the above certificate as clerk of the circuit court of the United States for the fifth circuit and eastern district of Louisiana, was at the time of signing said certificate, and is now, the clerk of said court; that said certificate is in due form of law, and that full faith and credit are due to his official attestations as such clerk.

Given under my hand at the city of New Orleans, in said district, this 23rd day of January, A. D. 1896.

CHARLES PARLANGE, *Judge.*

(Indorsement on cover:) Case No. 16159. Term No., 869. The United States, plaintiff in error, vs. Andrew H. Gay. E. Louisiana C. C. U. S. Filed January 27th, 1896.